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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. CR 18-00577 CRB
	)	
MICHAEL RICHARD LYNCH and	)	
STEPHEN KEITH CHAMBERLAIN,	)	
	)	
Defendants.	)	
_____	)	

San Francisco, California  
Wednesday, November 13, 2019

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

For Plaintiff:

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United States Attorney  
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**BY: ROBERT S. LEACH**  
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**ATTORNEY AT LAW**

(APPEARANCES CONTINUED ON THE FOLLOWING PAGE)

Reported By: **Marla F. Knox, RPR, CRR**  
Official Reporter

**APPEARANCES:** (CONT'D)

For Defendant Chamberlain:

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**BY: GARY S. LINCENBERG**  
**ATTORNEY AT LAW**

Wednesday - November 13, 2019

1:35 p.m.

P R O C E E D I N G S

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**THE CLERK:** Calling Criminal 18-0577, USA versus Michael Richard Lynch and Stephen Keith Chamberlain.

Counsel, please step forward and state your appearances for the record.

**MR. LEACH:** Good afternoon, Your Honor, Robert Leach and William Frentzen from the United States.

**MR. WEINGARTEN:** Good afternoon, Your Honor, Reid Weingarten for Michael Lynch.

**MR. LINCENBERG:** Good afternoon, Your Honor, Gary Lincenberg for Mr. Chamberlain whose presence is waived.

**MR. WEINGARTEN:** And Mr. Lynch is in England in the middle of his civil trial.

**THE COURT:** The middle?

**MR. WEINGARTEN:** Not the middle.

**THE COURT:** The middle of the trial that was supposed to have ended in July, the middle?

**MR. WEINGARTEN:** No, I misspoke. In fact, it has gone on for over 80 days. There have been 36 fact witnesses. The evidence is either complete or almost complete.

Lynch himself testified. He was cross-examined for over 20 days. It was reported in the English Legal Press that no one in the history of the United Kingdom has ever been on the

1 stand longer.

2 Right now the attorneys are preparing their closing  
3 submissions to the Court. They are expected to be over a  
4 thousand pages. And end of December, beginning of January are  
5 closing arguments; and the trial is expected to end officially  
6 around January 15th.

7 So when I said "middle," I was speaking loosely. I just  
8 gave you the facts.

9 **THE COURT:** No. That's quite a record.

10 **MR. WEINGARTEN:** Yes.

11 **THE COURT:** Well.

12 **MR. LEACH:** Your Honor, my office, the Northern  
13 District of California, executed its extradition request on or  
14 about September 10th of this year.

15 DOJ's Office of International Affairs has submitted the  
16 extradition request to the State Department for presentation to  
17 the United Kingdom. I believe that happened later in  
18 September.

19 My understanding is that the State Department has yet to  
20 formally submit the extradition request to the United Kingdom.  
21 Through our Office of International Affairs, we continue to  
22 attempt to expedite that as much as we can in light of other  
23 extradition requests that the office is handling, but I expect  
24 that to happen soon. And that's where we are from the DOJ's  
25 perspective.

1           **THE COURT:** Okay.

2           **MR. WEINGARTEN:** That's all news to me. So from our  
3 perspective, we haven't heard word one.

4           Obviously the Court recalls our understanding many, many,  
5 many months ago that we would sit tight and see what  
6 specifically is presented in the United Kingdom and then make a  
7 decision fully cognizant of all the rights we have under the  
8 Treaty. So that has not yet happened. So apparently they are  
9 under way. I hadn't known any of that.

10          **THE COURT:** What is taking the State Department so  
11 long?

12          **MR. LEACH:** I can't speak to that, Your Honor.

13          **THE COURT:** Well, can you ask?

14          **MR. LEACH:** I asked many times, Your Honor. I  
15 understand --

16          **THE COURT:** Can they please -- can you get them to  
17 file a declaration with this Court as to why -- as to how they  
18 proceeded and whether they are going to -- what their  
19 anticipated dates are or what their course of action is?

20           I would just like some explanation. I have a co-Defendant  
21 who is awaiting trial. The case is old. And I think properly  
22 the Defense has said: Look, you know, we are in trial now. If  
23 the United States wants us, we will respond when served with  
24 process.

25          **MR. WEINGARTEN:** Yes.

1           **THE COURT:** That's their position. Every Defendant is  
2 entitled to that. But I need to know from the State Department  
3 because I don't think I should just leave this out there to --  
4 in, you know, no man's land.

5           Please tell them the Court wants a statement from the  
6 State Department as to their intentions and dates as to how  
7 they are proceeding with the extradition. And please file that  
8 with copy to Counsel by December 1st.

9           **MR. LEACH:** I will do that, Your Honor.

10          **THE COURT:** Okay. Now, that takes care of that.  
11 Mr. Lincenberg?

12          **MR. LINCENBERG:** We have a motion on calendar before  
13 the Court for clarification --

14          **THE COURT:** I read it.

15          **MR. LINCENBERG:** -- on bond.

16          **THE COURT:** It seems to me I don't really have  
17 jurisdiction over this.

18          **MR. LINCENBERG:** I get it. I think there is one thing  
19 the Court can do.

20          I understand that courts are frustrated. They can't  
21 really take on CBP. The history of this is I think that the  
22 U.S. Attorney's Office and FBI have exercised extreme  
23 good-faith whenever we have attempted to have arranged for  
24 travel, and we have run into obstacles where on one occasion it  
25 was that an agent had to get something from the Consulate in

1 London and meet my client at the airport because he had to be  
2 on a plane to get here.

3 So what we are seeking to do is have some clarification  
4 from the Court, which C -- you know, the border people can  
5 ignore; but if the Court makes a statement at least that as  
6 part of bail, the -- they are allowing my client into this  
7 country under this 8 U.S.C. 1182(d)(5) because it is of  
8 significant public benefit.

9 I think it is appropriate for the Court to also clarify  
10 that the Court believes that significant public benefit means  
11 helping to expedite the travel and not limit my client from  
12 being able to work here. For example --

13 **THE COURT:** I don't know that that's true. I mean, I  
14 think I can say -- if you want me to say something, I can say  
15 nothing in the Court's bail order prevents the Defendant from  
16 traveling to the United States for any purpose.

17 I can't say he can come here for business purposes; that  
18 is, a Court orders that he be here -- that he is allowed in for  
19 business purposes. I don't have jurisdiction to do that. You  
20 know, that would be up on appeal; and I would -- number one, I  
21 wouldn't do it. If I did it, I would be reversed, in my  
22 opinion, because I can't order -- I can do a lot of things as a  
23 federal judge. I can't order somebody to come to the United  
24 States for business purposes.

25 I can order them to be here for these proceedings but as

1 you point out, that's not a problem. They will let him in for  
2 these proceedings.

3 However, if you want to give the negative of it, if you  
4 think it would be useful, I can say just what I just said, so  
5 that it's not construed that that's the only reason he can come  
6 to the United States. But it is clearly up to the Government  
7 to decide whether or not he should be admitted for any other  
8 purpose. I can't get involved in that.

9 **MR. LINCENBERG:** So I --

10 **THE COURT:** And I wouldn't.

11 **MR. LINCENBERG:** So everything that the Court has just  
12 said I think is fair enough. I think it might be of some  
13 benefit.

14 I would ask that the Court say something a little bit  
15 further, which is that when my client is in the United States,  
16 it is a perfectly legitimate purpose for him to be also  
17 working. It is consistent with the Court's bail order.

18 Other Defendants -- even Mr. Hussain, you know, works when  
19 he is in the United States. Many other Defendants work when  
20 they are in the United States. And I don't think that the  
21 Government opposes that or necessarily disagrees.

22 They are running into some red tape. And the Court can't  
23 dictate here how the border folks are going to interpret the  
24 red tape; but if there is a clear statement from the Court that  
25 the Court believes it is perfectly appropriate for



1 Mr. Chamberlain when he is over here for court meetings with  
2 Counsel --

3 **THE COURT:** Counsel, I don't know whether that is  
4 true. It depends on what the business is he is going to be  
5 engaged in. I don't know. I don't know whether it is true or  
6 whether it is not true. And that's not for the court --  
7 listen, I don't for a moment think you are not asking this in  
8 good-faith and for the sole purpose of facilitating his entry  
9 to the United States. I accept that because I know you are and  
10 I accept that -- that request.

11 Nevertheless, the lines are fairly clear in the Court's  
12 mind as to what I can do and what I can't do.

13 And I'm not going to interpret my bail order to say now he  
14 has permission to do X, Y or Z in the United States. He may or  
15 he may not. I don't know.

16 He may have complete -- be able to do it. But whether he  
17 comes in or not is a matter that I can insist on for purposes  
18 of the litigation, but I don't think my authority goes any  
19 further than that.

20 So I am just going to make sure that the order doesn't  
21 somehow preclude that the Government can't use it -- or the ICE  
22 or whoever the agency is -- can't use it as saying: Well, the  
23 Judge is limiting him to come to the United States for these  
24 proceedings only -- for coming to the United States only for  
25 these proceedings. I don't want it to be a limitation, but I

1 also don't want it to be an invitation to do something else.

2 **MR. LINCENBERG:** I think that is helpful, but the  
3 Court can and clearly can go one step further. It is in the  
4 Court's interest for people who are pending trial to be engaged  
5 in lawful business purposes and gainfully employed.

6 This is a monster of a case. There may be periods of time  
7 where my client is here for a lengthy period of time. He  
8 shouldn't be expected to give up his job or not work while he  
9 is here. And nobody is suggesting otherwise. These folks are  
10 not suggesting otherwise.

11 We are dealing with something where I believe just that a  
12 message from the Court, that that is appropriate -- it might  
13 help the border folks --

14 **THE COURT:** Let me go one step -- let me go half a  
15 step further. If you present to the Government and the  
16 Probation Department what work you propose your client to be  
17 engaged in in the United States, I then will listen to an  
18 argument as to whether or not I should expand the bail order to  
19 do exactly what you want him to do.

20 **MR. LINCENBERG:** Very well. I can do that.

21 **THE COURT:** Bring it. Show it to the Government.

22 **MR. LINCENBERG:** I can do it right now. I don't think  
23 they are going to object. We can do it on the record. This is  
24 pretty straightforward. He is --

25 **THE COURT:** You can do it any way you want to do it,

1 but my suggestion is that you are much better off sitting  
2 not -- much better off just talking to them, okay, and then  
3 figure out whether there can be some language that then can go  
4 into the order. And I'm telling you I will consider it, okay.

5 **MR. LINCENBERG:** Very well.

6 **THE COURT:** So you -- yeah, you won a little bit.

7 **MR. LINCENBERG:** A little bit.

8 (Laughter)

9 **THE COURT:** Anything else?

10 **MR. WEINGARTEN:** Just I'm reflecting on the dramatic  
11 news I just heard. The Government filed this paperwork for  
12 extradition in September. Obviously we were wondering why  
13 months and months and months have passed.

14 It would be very relevant for the extradition lawyers in  
15 England and for me advising my client to know what indictment  
16 we will face.

17 Obviously, the superseder profoundly changed the world and  
18 caused us to want to explore what rights we had under the  
19 Extradition Treaty.

20 So I would like to pose the question to the Prosecutors,  
21 if I may, what charges will we face? Is there another  
22 superseder in place or coming?

23 (Pause in proceedings)

24 **THE COURT:** Well, they can answer it any way they  
25 want.

1           **MR. WEINGARTEN:** I know.

2           **THE COURT:** Any way you want to answer it.

3           **MR. LEACH:** No.

4           **THE COURT:** No what?

5           **MR. WEINGARTEN:** I guess that means -- there is no  
6 superseder coming.

7           **MR. LEACH:** No, I'm not making a public statement  
8 about the extradition request before it is delivered through  
9 the proper channels.

10          **THE COURT:** Well, okay. So the answer is whatever has  
11 been in the extradition request --

12          **MR. LEACH:** I mean, there is a public indictment still  
13 pending.

14          **MR. WEINGARTEN:** Obviously, we know that.

15          **MR. LEACH:** They know many of the charges.

16          **THE COURT:** Obviously what you want to do is know  
17 whether it has been superseded?

18          **MR. WEINGARTEN:** Yes.

19          **THE COURT:** That is up to the Government to decide  
20 what they want to say on that subject.

21          **MR. WEINGARTEN:** I assume if there is an actual formal  
22 request from the State Department, we are going to see it at  
23 some point so I would like to know now.

24          **MR. LEACH:** I have no comment now, Your Honor.

25          **THE COURT:** There you go. No comment.

1           **MR. WEINGARTEN:** Can't force them. I --

2           **THE COURT:** Thank you.

3           **MR. WEINGARTEN:** Thank you, Your Honor.

4           **THE COURT:** Anything further?

5           **MR. LEACH:** Oh, Your Honor, I assume we should set  
6 another date for Mr. Chamberlain, and that the time between now  
7 and that date should be excluded for effective --

8           **THE COURT:** Yeah. Is it all right, Mr. Lincenberg, if  
9 we set January or something towards the end of January?

10          **MR. LINCENBERG:** I believe Mr. Leach said that he  
11 had -- January was tough for him. We were talking about early  
12 February.

13          **THE COURT:** February is fine.

14          **MR. LEACH:** February 13th.

15          **THE CLERK:** The 12th?

16          **MR. LEACH:** The 12th.

17          **THE CLERK:** Yes.

18          **THE COURT:** There you go.

19          **MR. LINCENBERG:** At 1:30?

20          **THE CLERK:** Yes.

21          **MR. LEACH:** Is it appropriate to exclude time for  
22 effective preparation and continuity of Counsel, Your Honor?

23          **THE COURT:** Yes. So excluded.

24          **MR. LINCENBERG:** Thank you, Your Honor.

25          **MR. WEINGARTEN:** Thank you.

1           **MR. LEACH:** Thank you.

2           **THE COURT:** Thank you.

3                               ---oOo---

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5  
6                               **CERTIFICATE OF REPORTER**

7           I certify that the foregoing is a correct transcript  
8           from the record of proceedings in the above-entitled matter.

9  
10          DATE:    Thursday, November 14, 2019

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13                               *Marla Knox*  
14                               \_\_\_\_\_

15                               Marla F. Knox, RPR, CRR  
16                               U.S. Court Reporter  
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